

**UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF NORTH CAROLINA
Civil Action No. 07-952**

**MONSANTO COMPANY and
MONSANTO TECHNOLOGY L.L.C.,**

Plaintiffs,

v.

THOMAS A. WAGONER, Jr.,

Defendant.

**COMPLAINT
AND JURY DEMAND**

Pat. # 5,352,605
Re 39,247
5,633,435

COME NOW the plaintiffs, Monsanto Company and Monsanto Technology L.L.C. (hereinafter referred to as "Monsanto" or "Plaintiffs"), by and through undersigned counsel, and for a Complaint at law against Thomas A. Wagoner, Jr. (hereinafter referred to as "Wagoner" or "Defendant"), makes the following allegations:

PLAINTIFFS

1. Monsanto Company is a company organized and existing under the laws of the State of Delaware with its principal place of business in St. Louis, Missouri. It is authorized to do business and is doing business in North Carolina and this judicial district.

2. Monsanto Technology, L.L.C. is a company organized and existing under the laws of the State of Delaware with its principal place of business in St. Louis, Missouri.

DEFENDANT

3. The Defendant, Thomas A. Wagoner, Jr., is an individual who has obtained

the age of majority and is a resident and domiciliary of Yadkin County, North Carolina.

JURISDICTION AND VENUE

4. Subject matter jurisdiction is conferred upon this Court pursuant to 28 U.S.C. § 1331, in that one or more of Monsanto's claims arise under the laws of the United States, as well as 28 U.S.C. § 1338, granting district courts original jurisdiction over any civil action regarding patents.

5. Venue is proper in this judicial district pursuant to 28 U.S.C. §§ 1391 & 1400, in that the Defendant resides in this judicial district and a substantial part of the events giving rise to these claims for patent infringement occurred in this judicial district.

GENERAL ALLEGATIONS

6. Monsanto is in the business of developing, manufacturing, licensing, and selling agricultural biotechnology, agricultural chemicals, and other agricultural products. After the investment of substantial time, expense, and expertise, Monsanto developed a new plant biotechnology that involves the insertion into plants a gene that causes the plant to be resistant to glyphosate based herbicides such as Roundup®.

7. This new biotechnology has been utilized by Monsanto in soybeans. The genetically improved soybeans are marketed by Monsanto as Roundup Ready® soybeans.

8. The Roundup® family of herbicides are non-selective chemicals which will cause severe injury or death to soybean varieties that do not contain the Roundup Ready® technology.

9. Monsanto's Roundup Ready® technology is protected by U.S. Patent Numbers 5,352,605 and RE 39,247 which are attached hereto as Exhibits "A" and "B" (hereinafter referred to as the '605 and '247 patents, respectively), which were issued prior to the events giving rise to this action.

10. Monsanto Technology L.L.C. is the owner of the '605 and '247 patents.

12. Monsanto Company is the exclusive licensee of the '605 and '247 patents from Monsanto Technology L.L.C.

13. Monsanto placed the required statutory notice that its Roundup Ready® technology was patented on the labeling of all bags containing Roundup Ready® soybean seed. In particular, each bag of Roundup Ready® soybean seed is marked with notice of U.S. Patent Nos. 5,352,605 and RE 39,247.

14. Monsanto licenses the use of Roundup Ready® seed technology to soybean producers at the retail marketing level through a limited use license agreement, commonly referred to as a Technology Agreement.

15. Among other things, the express terms of the limited use license prohibits licensees from saving harvested Roundup Ready® soybean seed for planting purposes, or from selling, transferring or supplying saved Roundup Ready® soybean seed to others for planting. The use of the seed is limited to the production of a single commercial crop.

16. Monsanto does not authorize the planting of saved (bin run and/or brown bag) Roundup Ready® soybeans.

17. Defendant planted brown bag seed in contravention of Monsanto's patent rights.

18. Upon information and belief, Defendant knowingly, intentionally and willfully planted saved Roundup Ready® soybeans without authorization in violation of Monsanto's patent rights.

COUNT ONE - PATENT INFRINGEMENT - Patent No. 5,352,605

19. Each and every allegation set forth in the above-numbered paragraphs is hereby incorporated by reference just as if it was explicitly set forth hereunder.

20. On October 4, 1994, United States Patent Number 5,352,605 was duly and legally issued to Monsanto for an invention in Chimeric Genes for Transforming Plant Cells Using Viral Promoters, and since that date, Monsanto has been the owner of this patent. This invention is in the fields of genetic engineering and plant biology.

21. Monsanto placed the required statutory notice that its Roundup Ready® technology was protected by United States Patent Number 5,352,605 on the labeling of all bags containing Roundup Ready® soybean seed in compliance with 35 U.S.C. § 287.

22. Defendants' conduct, as set forth above, constitutes the unauthorized use of a patented invention within the United States during the term of Patent Number 5,352,605, all in violation of 35 U.S.C. § 271. Accordingly, Monsanto has a right of civil action against the Defendants pursuant to 35 U.S.C. § 281.

23. Upon information and belief, the Defendant has and may be continuing to infringe Monsanto's patent by making, using, offering for sale, selling, or otherwise transferring Roundup Ready® soybean seed embodying the patented invention without authorization from Monsanto, and will continue to do so unless enjoined by this Court.

24. Pursuant to 35 U.S.C. § 283, Monsanto is entitled to injunctive relief in accordance with the principles of equity to prevent the infringement of rights secured by its patents.

25. Pursuant to 35 U.S.C. § 284, Monsanto is entitled to damages adequate to compensate for the infringement, although in no event less than a reasonable royalty, together with interest and costs to be taxed to the infringer. Further, damages should be trebled pursuant to 35 U.S.C. § 284 in light of the Defendants' knowing, willful, conscious, and deliberate infringement of the patent rights at issue.

26. The infringing activity of the Defendants brings this cause within the ambit of the exceptional case contemplated by 35 U.S.C. § 285, thus Monsanto requests the award of reasonable attorneys fees and costs.

COUNT TWO - PATENT INFRINGEMENT - Patent No. RE 39,247 E

27. Each and every material allegation set forth in the above numbered paragraphs is hereby incorporated by reference just as if it were explicitly set forth hereunder.

28. On August 22, 2006, United States Patent Number 5,633,435 was duly and legally reissued to Monsanto as U.S. Patent No. RE 39,247 E. U.S. Patent No. 5,633,435 was initially issued on May 27, 1997. The '247 patent is for an invention of Glyphosate-Tolerant 5-Enolpyruvylshikimate-3-Phosphate Synthases. This invention is in the fields of genetic engineering and plant biology.

29. Defendant's conduct, as set forth above, constitutes the unauthorized use of a patented invention within the United States during the term of Patent Number RE

39,247 E, all in violation of 35 U.S.C. § 271. Accordingly, Monsanto has a right of civil action against the Defendant pursuant to 35 U.S.C. § 281.

30. Defendant has infringed Monsanto's patent rights by making, using, offering for sale, selling, or otherwise transferring Roundup Ready® soybean seed embodying the patented invention without authorization from Monsanto, and will continue to do so unless enjoined by this Court.

31. Pursuant to 35 U.S.C. § 283, Monsanto is entitled to injunctive relief in accordance with the principles of equity to prevent the infringement of rights secured by its patents.

32. Pursuant to 35 U.S.C. § 284, Monsanto is entitled to damages adequate to compensate for the infringement, although in no event less than a reasonable royalty, together with interest and costs to be taxed to the infringer. Further, damages should be trebled pursuant to 35 U.S.C. §284 in light of the Defendant's knowing, willful, conscious, and deliberate infringement of the patent rights at issue.

33. The infringing activity of the Defendant brings this cause within the ambit of the exceptional case contemplated by 35 U.S.C. § 285, thus Monsanto requests the award of reasonable attorneys fees and costs.

34. Monsanto demands trial by jury.

WHEREFORE, Monsanto Company and Monsanto Technology L.L.C. pray that process and due form of law issue to Defendant, requiring him to appear and answer the allegation of this Complaint, and that after due proceedings are had, there be judgment in

favor of Plaintiffs and against the Defendant, providing the following remedies to Monsanto:

1. Entry of judgment for damages, together with interest and costs, to compensate Monsanto for the Defendant's patent infringement;
2. Trebling of damages awarded Monsanto for the infringement of its patents together with reasonable attorneys fees;
3. Entry of an order prohibiting the Defendant from planting, transferring or selling the infringing articles to a third party;
4. Entry of a permanent injunction to prevent Defendant from using, cleaning or planting any of Monsanto's proprietary seed biotechnology without express written authorization from Monsanto;
5. Entry of judgment for costs, expenses, and reasonable attorney's fees incurred by Monsanto; and
6. Such other relief as the Court may deem appropriate.

Respectfully submitted, this the 17th day of December, 2007.

/s/ David W. Sar

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N.C. State Bar No. 23533

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